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January 29, 2019

RE: Commission Policies Regarding PURPA in Arizona; Docket No. E-00000Q-19-0015

Dear Chairman Burns,

In response to your letter docketed January 15, 2019,¹ I wanted to voice my support for your request to expedite hearings on the development of a Commission policy regarding PURPA contracts in the state and share that I also hoped to see a Recommended Order and Opinion (ROO) ready for the Commission's consideration by June Open Meeting, 2019. I was first made aware of the Commission's lack of a formal policy in August 2018, and I immediately became concerned with the impact this void could have on renewable energy investments that had already been proposed in Arizona. I asked the Legal Division for an opinion on how negotiating parties should treat the Commission's position on PURPA until a final policy is adopted, and I had expected to see an update on this issue as soon as possible.

Seeing the Administrative Law Judge's (ALJ) recent procedural order,² however, it appears that the long wait for resolution will continue, as the first day of evidentiary hearings will not commence until November 13, 2019³—nearly a year after we moved to initiate these proceedings at the December Open Meeting, 2018.⁴ This means we will not see a final, prospective policy on how to handle future PURPA contracts in the state until at least 2020. Considering that the amount of time that will pass between now and seeing a final ROO could exceed a year, I believe the Commission should clarify its present expectations for PURPA negotiations that are currently ongoing in the state.

There are a number of developers who have been attempting to negotiate in good faith for PURPA projects in Arizona, but who have reached an impasse over what constitutes an acceptable term length for securing project financing. While our hearings scheduled for November 2019 are intended to address this issue prospectively, the ALJ and parties agree that they do not provide any guidance today for discussions that are already underway.⁵ Without taking swift action to offer an interim clarification for these discussions, I fear the state could lose over \$500 million dollars in private-sector solar energy investments currently proposed for rural Arizona, such as Navajo, Coconino, and Cochise Counties, among others. Considering also that federal investment tax credits will be stepping down in December 2019, I would be remiss if the Commission did not try to assist these substantial solar investments and provide the kind of PURPA guidance the Federal Energy Regulatory Commission (FERC) requires.

According to the FERC, the responsibility of implementing PURPA rules is left to each state's public utilities commission.⁶ Other states have determined that "setting the length of the contract is a necessary requirement" (emphasis added).⁷ Although the Arizona Corporation Commission has not yet "set the length" of PURPA contracts in Arizona, it appears from a preliminary review of our prior decisions,

¹ See *Correspondence from Chairman Burns* (Jan. 23, 2019), <http://docket.images.azcc.gov/0000195150.pdf>.

² See *Procedural Order* (Jan. 23, 2019), <http://docket.images.azcc.gov/0000195308.pdf>.

³ See *id.*, p.2, line 4.

⁴ See *Video Archive of Open Meeting*, 05:08:51 (Dec. 17, 2018), http://azcc.granicus.com/MediaPlayer.php?view_id=3&clip_id=3355.

⁵ See *Video Archive of Procedural Conference*, 00:49:22 (Jan. 17, 2018), http://azcc.granicus.com/MediaPlayer.php?view_id=3&clip_id=3386.

⁶ See *F.E.R.C. v. Mississippi*, 456 U.S. 742, 751, 102 S. Ct. 2126, 2133, 72 L. Ed. 2d 532 (1982).

⁷ In the *Matter of Idaho Power Company's Petition to Modify Terms and Conditions of PURPA Purchase Agreements*, Case No. IPC-E-15-01, Order 33419 at 14 (Nov. 5, 2015), http://www.puc.idaho.gov/fileroom/cases/elec/AVU/AVUE1501/ordnotc/20151105RECONSIDERATION_ORDER_NO_33419.PDF; In the *Matter of Nw. Energys Application for Interim & Final Approval of Revised Tariff No. Qf-1, Qualifying Facility Power Purchase*, No. 7500C, 2017 WL 3169003, at *25 (July 21, 2017), <http://ipu.msu.edu/wp-content/uploads/2017/10/D2016539FO7500c.pdf>.

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administrative rules, and existing FERC orders that the Commission could fulfill this requirement today, while the Commission awaits the outcome of its prospective proceedings.

In the spirit of your letter seeking expediency, and in an effort to help the Commission provide such interim guidance, I have opened a new, generic policymaking docket and respectfully ask that you place it on the agenda for our next Staff Meeting,⁸ February 2019, for discussion and possible vote. I call on my fellow Commissioners to join me in support of this effort and encourage all interested stakeholders, Staff, utilities, developers, and investors to provide any of the following information, if possible, prior to the Staff Meeting:

- (1) Details of recently executed contracts, including, for example, PPA's, PURPA projects, RFP's, and responsive bids.
- (2) Input from lenders or financial institutions regarding term lengths generally required for issuing financing.

Sincerely,

Andy Tobin
Commissioner

⁸ The agenda item could read: "Arizona Corporation Commission (DOCKET NO 19-0000; Commission Policies Regarding PURPA in Arizona); Commission discussion, consideration, and possible vote adopting a temporary interim policy on the limited issue of contract terms for PURPA in Arizona."

On this 29th day of January, 2019, the foregoing document was filed with Docket Control as a Correspondence From Commissioner, and copies of the foregoing were mailed on behalf of Commissioner Andy Tobin to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

Robin Mitchell
Director/Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Consented to Service by Email

Elijah O. Abinah
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Consented to Service by Email

By: 

Daniel Schwiebert
Deputy Policy Advisor to
Commissioner Andy Tobin